

Case No. 2:12-cv-02013-JCM-CWH

ORDER

Although styled as a motion, Plaintiff’s filing looks to be discovery requests she is attempting to serve on Defendants. Pursuant to the Court’s Local Rules, “written discovery . . . shall not be filed with the Court.” Local Rule (“LR”) 26-8. Additionally, as Plaintiff has been previously informed, “[a] party may not seek discovery from any source before the parties have

1 conferred as required by Rule 26(f)” *See* Fed. R. Civ. P. 26(d); *see also* Order (#25). Before
 2 any formal discovery can commence in this case, Plaintiff must first initiate the Rule 26(f)
 3 conference and submit a proposed discovery plan and discovery order. *See* LR 26-1(d) (“[P]laintiff
 4 shall initiate the scheduling fo the Fed. R. Civ. P. 26(f) meeting within thirty (30) days after the
 5 first defendant answers or otherwise appears. Fourteen (14) days after the mandatory Fed. R. Civ.
 6 P. 26(f) conference, the parties shall submit a stipulated discovery plan and scheduling order.”).¹

7 To the extent Plaintiff intended this motion to be a motion to compel, it fails for several
 8 reasons. First, it fails because Plaintiff is seeking discovery prior to initiating a 26(f) conference
 9 and prior to the entry of a discovery plan and scheduling order. Second, Plaintiff fails to provide
 10 points and authorities as she has not cited to any substantive law or rule in support of the motion.
 11 “The failure of the moving party to file points and authorities in support of the motion shall
 12 constitute a consent to the denial of the motion.” Local Rule 7-2(d). Finally, Plaintiff has not
 13 complied with the meet and confer requirements set forth in Rule 37(a)(1) or LR 26-7(b). Rule
 14 37(a)(1) requires a party seeking to compel discovery to “include a certification that the movant has
 15 in good faith conferred or attempted to confer with the person or party failing to make disclosure or
 16 discovery in an effort to obtain it without court action.” Local Rule 26-7(b) provides that
 17 “[d]iscovery motions will not be considered unless a statement of the movant is attached thereto
 18 certifying that, after personal consultation and sincere effort to do so, the parties have been unable
 19 to resolve the matter without Court action.” Failure to confer prior to filing a motion to compel is
 20 grounds for denial.² If a motion to compel is denied, the court must require the moving party to pay

21
 22 ¹ The Court also notes that Plaintiff’s motion is not compliant with Local Rule 5-1(a) or Fed. R. Civ. P.
 23 5(b). Plaintiff has indicated that she served Defendants’ counsel with a copy of her motion by fax. There is
 24 nothing in the record suggesting that Defendants’ counsel has consented to service by fax. *See* Fed. R. Civ. P.
 25 5(E), (F).

26 ² The moving party must comply with these requirements “to lessen the burden on the court and reduce
 27 the unnecessary expenditure of resources by litigants, through the promotion of informal, extrajudicial resolution
 28 of discovery disputes.” *Nevada Power v. Monsanto*, 151 F.R.D. 118, 120 (D. Nev. 1993). The consultation
 obligation “promote[s] a frank exchange between counsel to resolve issues by agreement or to at least narrow and
 focus matters in controversy before judicial resolution is sought.” *Id.* In order to serve its purpose, parties must
 “treat the informal negotiation process as a substitute for, and not simply a formal prerequisite to, judicial review
 of discovery disputes.” *Id.* In *Shuffle Master, Inc. v. Progressive Games, Inc.*, 170 F.R.D. 166 (D. Nev. 1996),


1 the reasonable expenses, including attorney fees the opposing party incurred in opposing the
2 motion. *See* Fed. R. Civ. P. 37(a)(5)(B).

3 The Court appreciates that Plaintiff is proceeding *pro se*, but that does not result in a
4 suspension of the rules applicable to all litigants. This is the Court's third express warning to
5 Plaintiff regarding the requirement that she comply with substantive law and rules when filing
6 motions. Plaintiff cannot continue to ignore the Court's orders or insist on operating free of the
7 rules applicable to all litigants. If Plaintiff persists in doing so, the Court will have no choice but to
8 consider sanctions.

9 Based on the foregoing and good cause appearing therefore,

10 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Production of Documents (#27) is
11 **denied.**

12 DATED this 22nd day of February, 2013.

13
14
15 
16 **C.W. Hoffman, Jr.**
17 **United States Magistrate Judge**
18
19
20
21
22
23

24
25 the Court identified two prongs to Rule 37's meet and confer requirement. First, the moving party must provide a
26 certification from counsel which "accurately and specifically conveys to the court who, where, how, and when
27 the respective parties attempted to personally resolve the discovery dispute." *Shuffle Master*, 170 F.R.D. at 170.
28 Second, the moving party must actually confer or attempt to confer in good faith. *Id.* The moving party must
move beyond cursory statements and "must adequately set forth in the motion essential facts sufficient to enable
the court to pass a preliminary judgment on the adequacy and sincerity of the good faith conferment between the
parties." *Id.* at 171.